

REMARKS

This application has been carefully reviewed in light of the Office Action mailed February 11, 2003. Although Applicants believe all original claims are allowable, to expedite issuance of this application, Applicants have made clarifying amendments to Claims 1, 11-15, 25-29, 41-45, and 55-58. Applicants have added new Claims 59-94 reciting limitations substantially identical to those recited in Claims 1-28 and 59-60. None of these changes is considered necessary for patentability. These amendments do not raise new issues and will not require further searching. If the Examiner maintains the Examiner's rejections, these amendments will also place this application in better condition for appeal. Accordingly, Applicants respectfully request that these amendments be entered. Applicants respectfully request reconsideration and allowance of all pending claims.

Applicants Have Reviewed *Schmidt* in its Entirety

In response to "applicant's arguments that certain specific components of [European Patent Application EP0770967A2 by Schmidt et al. ("*Schmidt*")]] are invalid," the Examiner states, "The entire reference is the official citation and is so cited as Patent Office Policy. Applicants therefore must review the entire reference if they unsatisfied with the lines referred to in the rejection for applicant's convenience."

Applicants have carefully read *Schmidt* (and every other cited reference) in its entirety since receiving the May 8, 2002 Office Action. Specific references to specific portions of *Schmidt* in Applicants' previous Response were intended to address the Examiner's rejections and were not intended to indicate that Applicants had read only those portions of *Schmidt* that were cited by the Examiner.

None of the Limitations Recited in Applicants' Claims is Generic

The Examiner states that, with respect to independent Claims 1 and 15 of the present Application, *Schmidt* "uses different language from applicant's claims language," but "meet the generic claimed limitations generically." Applicants respectfully submit that none of the

limitations recited in any of Applicants' claims is "generic." Applicants also respectfully submit that, even assuming for the sake of argument that *Schmidt* "uses different language from applicant's claims language," *Schmidt* still fails to disclose, teach, or suggest limitations recited in Applicants' claims, as Applicants have clearly shown.

According to the M.P.E.P., while "identity of terminology is not required" by 35 U.S.C. § 102, a "claim is anticipated [by a reference] only if each and every element as set forth in the claim is found, either expressly or inherently described, in [the] reference." M.P.E.P. § 2131 (2001). "The identical invention must be shown in as complete detail as is contained in the claim." *Id.* Applicants respectfully submit that whether *Schmidt* "meet . . . claimed limitations generically" is an inappropriate standard for determining whether *Schmidt* anticipates any of Applicants' claims.

**Claims 1-2, 5-7, 11, 15-16, 19-21, 25, 32, 34-37, 41-42, 45-46, 48-51, and
55-56 Are Allowable Over *Schmidt***

The Examiner rejects Claims 1-2, 5-7, 11, 15-16, 19-21, 25, 32, 34-37, 41-42, 45-46, 48-51, and 55-56 under 35 U.S.C. § 102(b) as being anticipated by *Schmidt*. *Schmidt* discloses that vendor-managed replenishment (VMR) is a process in which the supplier takes on the responsibility of managing the inventory at the customer's site for the products it supplies. (Page 12, Lines 4-5). The process operates on point-of-sales demand as opposed to demand forecast provided by the customers. (Page 12, Lines 4-5). According to *Schmidt*, VMR involves formulating the contractual agreements between the enterprise and the retailers as well as determining the operating parameters, such as shipment quantities and replenishment frequencies. (Page 12, Lines 5-6).

Schmidt also discloses a VMR frame that consists of a set of decision-support tools that can be used in the development of VMR programs. (Page 28, Lines 7-8). The features offered by the VMR frame support the decision-making processes in the VMR programs at both strategic and operational levels. (Page 28, Lines 8-9). More specifically, at the strategic level, the user can invoke the features provided by the VMR frame to study the feasibility of VMR programs;

evaluate the terms of VMR contracts; and periodically review the overall performance of the VMR program. (Page 28, Lines 9-11). According to *Schmidt*, during the initial stage of potential engagement in a VMR program, the conditions in the VMR contract are proposed, studied, and negotiated. (Page 29, Lines 19-20). Under such circumstances, the user needs to evaluate the costs and benefits of many different program options. (Page 29, Lines 20-21). After a VMR program has been setup and the execution started, it requires constant monitoring of the key policy parameters and performance measures. (Page 29, Lines 45-46).

According to *Schmidt*, the generation of replenishment orders is the main functionality of the replenishment planning of the VMR frame. (Page 30, Lines 41-42). *Schmidt* defines a replenishment order as the detailed order status information that is recorded to capture the replenishment activities included in the program. (Page 28, Lines 58-59). The main objective of the functionality is to provide the user with an initial set of replenishment quantities for a set of products, with the consideration of the sell-through forecasts as well as VMR-specific operating parameters. (Page 30, Lines 41-42). The quantities will then be approved by the user and converted into actual purchase orders. (Page 30, Lines 43-44).

In contrast, independent Claim 1 of this Application, as amended, recites:

A method of multi-enterprise optimization at a buyer computer system, comprising:

accessing a forecasted demand for at least one item;

automatically and without user input subsequent to accessing the forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand for the item;

automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;

automatically and without user input subsequent to communicating the proposed flexible trade contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract;

automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer

system, as part of the automatic collaborative negotiation, evaluating the modification to determine whether the modification is acceptable;

automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, accepting the modification if the modification is acceptable; and

subsequent to execution of a flexible trade contract created based on the proposed flexible trade contract—as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract.

Independent Claims 15, 29, 45, 63, 78, 93, and 94 recite substantially similar limitations. *Schmidt* fails to disclose, teach, or suggest the particular combination of limitations specifically recited in Applicants' independent claims, whether *Schmidt* is considered alone or in combination with any other cited reference or with knowledge that was generally available to those having ordinary skill in the art at the time of the invention.

As an example, *Schmidt* fails to disclose, teach or suggest, automatically and without user input subsequent to accessing forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand, as recited in independent Claim 1. *Schmidt* merely discloses a user evaluating costs and benefits of VMR program options when a VMR contract is being proposed, studied, and negotiated and, later, providing a user an initial set of replenishment quantities that the user approves and are converted into purchase orders. *Schmidt* therefore also necessarily fails to disclose, teach, or suggest any of the following limitations recited in independent Claim 1:

- automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;
- automatically and without user input subsequent to communicating the proposed flexible contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract;
- automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the modification to determine

- whether the modification is acceptable; and
- automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, accepting the modification if the modification is acceptable; and subsequent to execution of a flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract.

For at least these reasons, independent Claims 1, 15, 29, 45, 63, 78, 93, and 94 are patentably distinct from *Schmidt*, whether *Schmidt* is considered alone or in combination with any other cited reference or with knowledge that was generally available to those having ordinary skill in the art at the time of the invention. Accordingly, applicants respectfully request allowance of Claims 1, 15, 29, 45, 63, 78, 93, and 94 and all claims that depend on Claims 1, 15, 29, 45, 63, and 78, respectively.

***Shepherd* Fails to Account for the Deficiencies of *Schmidt*,
Even if They Could be Properly Combined**

The Examiner rejects Claims 3-4, 8-10, 12-14, 17-18, 22-24, 26-29, 31-33, 38-40, 43-44, 46-47, 52-54, and 57-58 under 35 U.S.C. § 103(a) as being anticipated by *Schmidt* in view U.S. Patent No. 5,970,479 to *Shepherd* (“*Shepherd*”). *Shepherd* discloses that, in the face of economic risk, it is known for individuals and enterprises to hedge against adverse outcomes by indirect means such as self-insurance and directly by means such as futures contracts, forward contracts, and swaps. (Column 2, Lines 28-32). According to *Shepherd*, in the period between the match of a contract and maturity, the various buyers, sellers, and other contract stakeholders can review any contract to which they are a party and seek to trade that contract to other parties using a pricing and matching procedure. (Column 5, Lines 25-30). A matched option order confirmation subprocess secures, automatically, the positive agreement of all affected stakeholders to an options contract, including confirmation of the product-option-ordering parties ability to immediately pay (or be granted counter party credit or ordering party grantor credit) the required option product consideration (and possible other applicable fees). (Column 49, Lines 27-33). Automatic approvals of contracts are made by an application electronically transferring resources recorded in the ordering parties applicable consideration/entitlement transfer into entity account to the account of the applicable counter party. (Column 49, Lines 34-37).

Shepherd also discloses a “derivative secondary” product option order that includes particular information; “derivative primary” risk management contracts that are options contracts, or futures contracts, or forward contracts, or forward rate contracts, or swaps, or like financial instruments based on specified, but yet to be established, primary risk management contracts; and “derivative secondary” risk management contracts that are options contracts, or futures contracts, or forward contracts, or forward rate agreements, or swaps or like financial instruments based on pre-existing primary risk management contracts (which may have been traded since they were first established), including instruments based on specified but yet to be established secondary risk management contracts and the intended tertiary trading/exchange/transfer of specified, established secondary risk management contracts. (Column 50, Lines 10-27; Column 55, Lines 60-64; Column 55, Line 65, through Column 56, Line 7).

Assuming, for the sake of argument, that *Shepherd* could be properly combined with *Schmidt*, *Shepherd* would still fail to account for the deficiencies of *Schmidt*. As an example, *Shepherd* in no way discloses, teaches, or suggests any of the limitations discussed above that Applicants have shown are not disclosed, taught, or suggested in *Schmidt*. *Shepherd* merely discloses various contracts for hedging against risks and electronically transferring resources between contracting parties’ accounts.

For at least these reasons, independent Claims 1, 15, 29, 45, 63, 78, 93, and 94 are patentably distinct from the proposed *Schmidt-Shepherd* combination. Accordingly, Applicants respectfully request allowance of independent Claims 1, 15, 29, 45, 63, 78, 93, and 94 and all their dependent claims.

CONCLUSION

For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case, the Examiner is invited to call the undersigned attorney for Applicants, Christopher W. Kennerly, at the convenience of the Examiner. Mr. Kennerly can be reached at 214.953.6812.

A check in the amount of \$984.00 is enclosed for the addition of four independent claims over three and the addition of 36 claims total over 20. Applicants believe no other fees are due. However, the Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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